

C.) REMARKS

Introduction

The Office Action has been received and carefully considered. Claims 1-26 are pending in the application. Claims 1-26 stand rejected by the Examiner. By this amendment, Applicant proposes amending claim 1 in response to the Examiner's rejections. No new matter is added by these amendments. As such, Applicant respectfully submits that the claims are now in condition for allowance and in better form for consideration on appeal. Accordingly, Applicant respectfully requests entry of the amendments.

Claim Rejections

§ 103 Rejections

The Examiner rejected claims 1-26 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,968,855 to Perdelwitz, Jr. *et al.* ("Perdelwitz") in view of U.S. Patent No. 4,323,069 to Ahr *et al.* ("Ahr"). The Applicant respectfully submits that the proposed amended claims traverse the rejection, and requests reconsideration of these rejections for at least the following reasons.

Three criteria must be met to establish a *prima facie* case of obviousness: (1) there must be some suggestion or motivation to modify the reference or to combine reference teachings, (2) there must be a reasonable expectation of success, and (3) the prior art references must teach or suggest all the claim limitations. *See* MPEP § 2142 *et seq.* Applicant respectfully submits that the prior art of record, regardless of whether it is properly combined, fails to teach or suggest all of the features of the proposed amended claims, and therefore there is no *prima facie* case of obviousness.

With respect to independent claim 1, the Examiner alleges that Perdelwitz discloses an "absorbent article [that] has a 300 mL rewet under load of less than 1.25 g, as disclosed in column 9, lines 23-45 and table 2. It therefore follows that the rewet under load for only 200 mL would inherently be less than 1.25g as well." Office Action

at page 2. Applicant set forth in the last response to the Examiner that the present invention is distinguishable over Perdelwitz because the rewet test methods are significantly different, and will produce different results. Reproduced below is Table I from the Applicant's response, which summarizes the differences in the two test methods.

**Table I: Comparison of Rewet Test Methods**

Perdelwitz Test Method	Present Invention Test Method
<u>Strikethrough Plate</u> 4" x 12" 1/21" thick 2"i.d. hole cut at 6" o.c. from leading edge 2"i.d. plexiglass tube protruding from hole full 2" i.d. opening to product total weight: 0.3 psi	<u>Strikethrough Plate</u> <i>100 mm square (~4" x 4")</i> <i>25mm thick (~1")</i> <i>25mm i.d. hole cut (~1")</i> <i>hole centered on plate</i> <i>tapered hole,</i> <i>(no tube)</i> <i>six-armed opening to product, six</i> <i>9.5mm x 1.5mm slots</i> <i>(no weight specified)</i>
<u>Placement</u> orifice centered 61" [?] from the leading bottom edge of the front waistband centered within the leg cuffs	<u>Placement</u> orifice placed over the <i>center of absorbent core</i>
<u>Insults</u> 1) initial - (no weight / rewet) 100 mL  2) 10 mins after initial 100 mL  3) 20 mins after initial <u>100 mL</u>  Total: 300mL	<u>Insults</u> 1) initial 100 mL - 0.5 psi load for 10 minutes - rewet for 10 minutes 2) (~20 mins after initial) 100 mL - 0.5 psi load for 10 minutes - rewet for 10 minutes 3) (~40 mins after initial) <u>100 mL</u> - 0.5 psi load for 10 minutes - rewet for 10 minutes  Total: 300mL
<u>Rewet Method</u> conducted 50 minutes after initial insult load: 4" x 4" weight - 0.5 psi 2 filter papers, 5" square (no weight specified) load / paper maintained for 2 minutes	<u>Rewet Method</u> conducted <i>after every insult</i>  load: 2.5" x 2.5" weight - 0.5 psi for second rewet: 79g of filter paper for third rewet: 90g of filter paper load / paper maintained for <i>10 minutes</i>

As Table I demonstrates, it is impossible to compare the results from the Perdelwitz test to the properties claimed by the present invention because the two test methods are very dissimilar. Indeed, the present test method is much more demanding, and therefore it is apparent to one of ordinary skill in the art that Perdelwitz's disclosure of a 300 mL rewet under load of 1.25 g using *the Perdelwitz test*, would not inherently produce a 200 mL rewet of 1.25 g *using the claimed test method*. As such, Applicant respectfully requests reconsideration of the § 103 rejection of claim 1.

In order to more clearly distinguish the claimed invention over Perdelwitz, the proposed amendment to claim 1 incorporates the rewet test method conditions of the present invention. Support for this amendment may be found on pages 15-17 of the specification, where the rewet test method is described. No new matter is presented with this amendment. Applicant submits that this amendment places the application in condition for allowance, and places it in better condition for appeal. Accordingly, Applicant respectfully requests entry of the proposed amendment.

Both Perdelwitz and Ahr fail to teach an absorbent product having an apertured film transfer layer, and having a 200 milliliter rewet less than 1.25 grams and a 300 milliliter rewet less than 4 grams, when measured according to the rewet test method of the present invention. In contrast, the Applicant has unexpectedly found that an absorbent product using an apertured film transfer layer as claimed, produces unexpectedly low rewet results when compared to conventional absorbent products, particularly those that use a nonwoven transfer layer. In particular, the applicant claims an apertured film disposed between the inner layer and the absorbent core yielding a 200 mL rewet under load of less than about 1.25 grams, and a 300 mL rewet under load of less than about 4 grams, when tested according the claimed rewet method, whereby the 200 milliliter rewet under load is determined by insulting the absorbent article with a first 100 milliliter dose, placing a 0.5 psi load on the area of insult for 10 minutes, measuring the 100 milliliter rewet for 10 minutes, insulting the absorbent article with a second 100 milliliter dose, placing a 0.5 psi load on the area of

insult, and thereafter measuring the 200 milliliter rewet for 10 minutes; and whereby the 300 milliliter rewet under load is determined by insulting the absorbent article with a third 100 milliliter dose, placing a 0.5 psi load in the area of insult for 10 minutes, and thereafter measuring the 300 milliliter rewet for 10 minutes. It is respectfully submitted that Perdelwitz and Ahr, in combination, fail to teach or suggest all the elements of claim 1, and therefore do not support a *prima facie* case of obviousness. For at least these reasons, the Applicant respectfully requests reconsideration and allowance of claim 1.

The Examiner rejected claims 2-26 as being rendered obvious by Perdelwitz in view of Ahr. Claims 2-26 depend directly from claim 1. As such, the Applicant claims that for at least the same reasons listed above, claims 2-26 are also not rendered obvious by Perdelwitz in view of Ahr. As such, the Applicant respectfully requests reconsideration and allowance of claims 2-26.

### Conclusion

For at least the reasons outlined above, Applicant submits that the application is in condition for allowance. Entry of the amendments and favorable reconsideration and allowance of the pending claims are respectfully solicited. Should there be any questions regarding the foregoing, the Examiner is invited to contact the applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,  
HUNTON & WILLIAMS LLP

Dated: October 20, 2003

By: 

Michael P.F. Phelps  
Registration No. 48,654

Hunton & Williams LLP  
1900 K Street, N.W., Suite 1200  
Washington, D.C. 20006-1109  
(202) 955-1500 (Telephone)  
(202) 778-2201 (Facsimile)